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No. 494

In the Supreme Court of the United States

OCTOBER TERM, 1960

CHARLES HENRY TURPIN, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit (Pet. 13–17) is reported at 281 F. 2d 637.

JURISDICTION

The judgment of the Court of Appeals was entered on July 14, 1960. A petition for rehearing and/or rehearing *en banc* was denied on September 19, 1960. The petition for a writ of certiorari was filed on October 19, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether there was error in the admission into evidence of statements, made by petitioner before and

after arraignment, that he shot the deceased in self defense.

2. Whether the supplementary instructions given at the request of the jury were erroneous.

STATEMENT

Petitioner was charged in a one count indictment with murder in the first degree of Luther Buckson (Pet. 5). Following a trial by jury in the United States District Court for the District of Columbia, petitioner was convicted of manslaughter,[1] and was committed under the Youth Corrections Act (18 U.S.C. 5010(b)) (Pet. 5) to the custody of the Attorney General.[2] The Court of Appeals affirmed the conviction (Pet. 13–17).

The pertinent facts are as follows:

1. THE CIRCUMSTANCES OF THE CRIME

Before midnight on August 12, 1959, the deceased, looking out of the window of his home, saw someone at his car (J.A. 7). He ran out in his undershorts, fired a shot, came back to his apartment, and called the police (J.A. 7–8, 18). At the time the deceased fired this shot, petitioner was with three companions[3] whom he had met shortly before (J.A. 17–18). Peti-

[1] The trial court held that the government failed to prove first degree murder and the matter was submitted to the jury on the questions of second degree murder and manslaughter (J.A. 46).

[2] Under that Act such commitment, which is "for treatment and supervision" (18 U.S.C. 5010), cannot exceed four years (18 U.S.C. 5017).

[3] The others had previously decided to attempt to steal some fender skirts (J.A. 16–17).

tioner had a gun (J.A. 18). The four, including petitioner, ran away (J.A. 18–19).

After coming back to the apartment, the deceased dressed and left without his gun (J.A. 8, 9). He was found about midnight with several bullet wounds in the right side of his chest (J.A. 21–25). A .22 caliber gun and nine empty cartridges in a waste basket were found in petitioner's apartment in a search conducted under a warrant about 4:30 p.m. on August 14, 1959 (J.A. 4–5).[4]

2. PETITIONER'S STATEMENTS

(a) Early in the trial the government called the widow of the deceased (J.A. 6–14). She testified that she had seen petitioner on August 14, 1959, at Municipal Court (J.A. 10–11, 32).[5] It was stipulated that this was approximately one-half hour after petitioner's preliminary hearing (at about 11 p.m. on August 14), while petitioner was still in the cell-block at Municipal Court (J.A. 11). At that time petitioner told Mrs. Buckson that he was sorry he had shot the deceased (J.A. 13). He said that he had shot because he was afraid, but that he had not intended to do so (J.A. 13–14, 32–33). Lieutenant Daily of the Homicide Squad, who was also present when the statement was made, corroborated it (J.A. 31–33).

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[4] This was after the arrest of petitioner but before he made the statements at issue in this case.

[5] At a bench conference following the impanelling of the jury, government counsel told the court that it was his understanding that petitioner had asked to see the widow (Pet. for Rehearing, App. B-2).

Petitioner objected to testimony about this statement, on the ground that it resulted from a previous illegal detention (J.A. 12, 32).[6] The court held that the statement was admissible because it was made after preliminary hearing to a person not a police officer (J.A. 12, 32).

(b) Officer Benjamin Chaplin testified that on the day of the arrest (at about 12:10 p.m. on August 14, 1959) he had talked with petitioner from 1:45 or 2:00 p.m. until 5:45 p.m. (J.A. 34).[7] At about 3:00 p.m. petitioner told Chaplin that if he could talk to his wife he would tell what had happened (J.A. 34). The police were not able to locate petitioner's wife until 5:15 p.m., at which time she arrived at the police station and talked with petitioner (J.A. 39). At approximately 5:45 p.m. petitioner made an oral statement about the events of the previous night and said that he had shot the deceased because he believed the deceased was still carrying a gun (J.A. 43). Petitioner was arraigned about 11 p.m. that night. The district court permitted the officer to testify about the oral statement on the ground that there had been no unnecessary delay between the arrest and the statement (J.A. 42–43).

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[6] Petitioner earlier had objected to reference to either statement in the opening statement of the government, but the court held that the government could refer to the statements (Pet. for Rehearing, App. B. 1–3).

[7] At the time Chaplin entered the room in which he talked with petitioner, other officers were questioning him (J.A. 38). At least one other officer questioned petitioner during the interval between 2:00 and 5:45 (J.A. 39).

Petitioner told the police that shortly before the shooting he had gone to the apartment which he and his wife usually shared to pick up a pistol which his wife had asked him to bring to her at the home of petitioner's parents, where petitioner and his wife were staying temporarily. Petitioner placed the pistol in his belt and started walking to his parents' home (J.A. 42). En route he came upon the three friends with whom he stopped to talk, and he showed them the gun. While they were standing near the automobile of the deceased, the deceased came out of his apartment in his undershorts and fired a shot (J.A. 42–43). Petitioner and his companions ran for about two blocks, after which petitioner continued on his way. Near the place at which the deceased had fired the earlier shot, the deceased, then fully clothed, jumped from behind a parked car, saying to petitioner "Come here. Don't run or I'll shoot" (J.A. 43). Petitioner thereupon pulled the pistol from his belt and fired several shots at the deceased (J.A. 43).

3. THE CHARGE

After the jury began its deliberations, it sent a note to the trial judge asking that he "redefine or clarify the terms self-defense, excessive force and the significance of the defendant's frame of mind at the time of the commission of the crime in connection with self-defense and excessive force" (J.A. 59). The court gave the following instructions (J.A. 59–60):

> * * * First, self-defense: if a person is being attacked or in real danger of being attacked,

seriously attacked, then he has a right to protect himself. That is self-defense. That is fundamental. Preservation is the first law of nature. But he must be in real danger. He must be actually attacked or in real danger of being attaacked, and he must have a reasonable ground to believe that he is about to be attacked. And also, that he has no other way of protecting himself except by taking the step that he has taken. That is self-defense. It is limited, however, to the rule that one may not use excessive force. That means this: a person who is in a position of exercising his right of self-defense has no right to go any further than is necessary for his own safety. If he can protect himself without killing his attacker, why, he may not kill his attacker. If killing his attacker is the only reasonable way of protecting himself, then, of course, he has a right to kill him. But if he can protect himself by not going as far, then his right of self-defense does not go as far as to kill his attacker. Or, as in this case, even if it was reasonably necessary to use a firearm, if he could protect himself by firing one shot, he cannot fire any more.

Now, it is for the jury to consider what was reasonable to do under the circumstances, but a person in exercising his right of self-defense is not permitted to go any farther than is reasonably necessary to protect himself.

Now, the significance of the defendant's frame of mind at the time of the commission of the crime in connection with self-defense and excessive force: the significance is this: in the first place, in order to exercise his right of self-defense, the person must honestly think that he is in serious danger. That is the significance of

his frame of mind. But it isn't enough that he honestly think that he is in serious danger. His belief must be reasonable and not just caused by nervousness or by an upset state of mind or something of that sort. There must be a reasonable basis for the belief that he is in danger and, in addition, there must be an honest belief that he is in danger.

After the completion of the supplementary instructions the following colloquy took place between counsel for petitioner and the trial judge (J.A. 60–61):

Mr. BRYANT. If your Honor please, I think that you might have done it in your last remarks, but in the beginning you told the jury the defendant, in order to exercise self-defense, must actually be in real danger. Then later on, you did say he must think so. I would like for it to be told to them that if the facts are found, as a matter of fact, later on that he could not, or that he was not in danger, but at the time he thought he was by virtue of the circumstances, and that there were circumstances which were such that would allow him to draw that conclusion, then he acted——

The COURT. I do not think that I shall expand my explanation. I think my definitions were responsive to the question of the jury and I do not think I shall go beyond that question.

ARGUMENT

1. Petitioner argues (Pet. 7–10) that his statement before arraignment was inadmissible because it resulted from an undue delay in arraignment, and that the second statement to the widow of the deceased was inadmissible as "inextricably" tied to the first. We think neither contention is valid.

a. In the circumstances of this case, we do not think the delay in arraignment rendered the statement inadmissible under the rule of *Mallory* v. *United States*, 354 U.S. 449. Whether a delay is reasonable is to be determined not by a mechanical counting of the hours between arrest and preliminary hearing, but by an examination of the circumstances of the particular case. *Mallory* v. *United States*, 354 U.S. 449, 453, 455; *Williams* v. *United States*, 273 F. 2d 781, 798 (C.A. 9). In the instant case the police had probable cause for the arrest of petitioner. He had been one of those who fled when the deceased fired a shot and he had been seen in the vicinity of the slaying carrying a gun. Even while petitioner was being held, the police had found the gun and empty cartridges in his apartment (J.A. 4–5; 28–30). These were damaging coincidences and the police were entitled to conduct a reasonable pre-arraignment interrogation of petitioner in seeking some explanation about them. See *Goldsmith* v. *United States*, 277 F. 2d 335, 344 (C.A. D.C.), No. 68 Misc. O.T. 1960, certiorari denied, October 17, 1960; *Metoyer* v. *United States*, 250 F. 2d 30, 33 (C.A.D.C.).

Petitioner's decision to make a statement was made less than three hours after he was arrested and approximately one hour after Officer Chaplin began to talk with him (J.A. 34, 39). In view of the fact that a homicide had occurred this was not an unreasonable period for questioning. The delay between 3:00, when petitioner decided to speak, and 5:45, when he made his statement, was due to the efforts of the police to comply with petitioner's request to see his wife.

Since this delay was caused by petitioner himself, it cannot be imputed to the police. *United States* v. *Leviton*, 193 F. 2d 848, 855 (C.A. 2), certiorari denied, 343 U.S. 946. The fact that the police continued to question petitioner after he evidenced a willingness to make a statement does not render the statement inadmissible. The officers were only utilizing the delay engendered by petitioner himself to clear up matters surrounding the homicide. That this questioning was not prejudicial to petitioner is supported by the fact that he made no statements about the shooting during this questioning (J.A. 40).[8]

Since, in the circumstances of this case, the time that elapsed between petitioner's arrest and the making of his statement was reasonable, any delay in his arraignment following the completion of his statement did not render the statement inadmissible. See *United States* v. *Mitchell*, 322 U.S. 65, 70; *Perry* v. *United States*, 253 F. 2d 337 (C.A.D.C.), certiorari denied, 356 U.S. 941.

In any event, the proof of the pre-hearing statement resulted in no prejudice to the petitioner. See *Morse* v. *United States*, 256 F. 2d 280 (C.A. 5). When this statement was proved at the trial, the statement to the widow had already been proved.

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[8] Petitioner points to the fact that at 5:30 p.m. his request for food was denied. No invidious inference can be drawn from this denial since the reason for it was that the normal meal hour at the precinct was later in the day (J.A. 38). In any event, there is no evidence that petitioner had requested food prior to 3:00 p.m. when he decided to make his statement. Neither does petitioner contend that he had not been given a meal at the time he made his statement to Mrs. Buckson.

The statement to the police and the statement to the widow were substantially the same insofar as they described the circumstances of the shooting, and the introduction of the former statement was thus merely cumulative in effect. See *Haines* v. *United States*, 188 F. 2d 546, 550 (C.A. 9), certiorari denied, 342 U.S. 888. Moreover, since petitioner did not testify, these statements were the means by which petitioner presented his claim of self-defense to the jury and were so used in cross-examination (J.A. 44). Therefore, the fact that the same explanation had been given before aided petitioner's defense.

b. The statements to the widow were plainly admissible. The statement to Mrs. Buckson was not made at police headquarters, as was the first, but at the Municipal Court. It was made within minutes of the preliminary hearing at which the committing magistrate was required to inform petitioner of his right to remain silent (Rule 5(b), Federal Rules of Criminal Procedure). In addition, the statement was made, not to police officers, but to the widow of his victim. This statement was different in purpose and motivation from that given at the police station. It was a spontaneous act of contrition, and a natural expression of sorrow. Despite petitioner's allegations that the police of the District of Columbia have developed a practice of obtaining post-hearing statements from an accused, there is no evidence that the police induced or expected the statement which petitioner made to Mrs. Buckson. Therefore, regardless of the admissibility of the earlier statement at the police station, the statement to the widow, as a voluntary admission made while petitioner was legally

held, was admissible at petitioner's trial. See *United States* v. *Bayer,* 331 U.S. 532; *Goldsmith* v. *United States,* 277 F. 2d 335 (C.A.D.C.), No. 68 Misc., O.T. 1960, certiorari denied, October 17, 1960.

Petitioner contends (Pet. 9–10) that the decision below is in conflict with *Trilling* v. *United States,* 260 F. 2d 677 (C.A.D.C.) and *Jackson* v. *United States,* 273 F. 2d 521 (C.A.D.C.). Aside from the fact that a conflict in decisions within a circuit does not call for resolution by this Court, there is in fact no conflict. Rather, as is inevitable in this type of question, each case turns on its own facts. While a majority of the court concurred in the decision in *Trilling,* the rationale of the holding is obscured by the fact that five separate opinions were filed. Certainly that decision does not, and in the light of this Court's decision in *Bayer, supra,* could not, hold that all post-preliminary hearing statements by an accused are inadmissible because a prior inadmissible statement had been given. Nor does *Jackson.* In that case the accused made no new statement after the hearing, and did not specifically affirm the oral statement he had previously made. He merely signed a document in which the police officers had set down the statements he had made while he was being illegally detained. The instant case is clearly distinguishable because here petitioner made a new statement, to a person not a police officer, as the result of a different motivating force.

2. Petitioner's contention (Pet. 10) that the supplementary instructions misled the jurors is not supported by a reading of the full statement by the trial

judge. The jury had asked the court to "clarify or redefine" specific terms, and the supplementary instructions were properly limited to meet this request. *Apel* v. *United States,* 247 F. 2d 277, 283 (C.A. 8). Petitioner cannot show error by taking words out of context; the supplementary statement must be considered as a whole. See *Acers* v. *United States,* 164 U.S. 338, 390; *Spring Co.* v. *Edgar,* 99 U.S. 645, 659; *Patterson* v. *United States,* 192 F. 2d 631, 633 (C.A. 5), certiorari denied, 343 U.S. 951.

The court's charge on the nature of the required reasonable belief of the accused was proper and sufficient to guide the jury in determining whether petitioner had valid ground for shooting in self-defense. See *Addington* v. *United States,* 165 U.S. 184, 187; *Jackson* v. *United States,* 48 App. D.C. 272, 277. The trial court was not bound to accept the wording suggested by petitioner. See *Agnew* v. *United States,* 165 U.S. 36, 51. The trial judge had given full instructions in the main charge on the considerations involved in determining the reasonableness of petitioner's belief that he was in such peril as would justify killing in self-defense.[9] The supplementary instructions do not stand alone but must be interpreted in connection with instructions previously given. *Albizu* v. *United States,* 88 F. 2d 138, 143–144 (C.A. 1), certiorari denied *sub nom. Camps* v. *United States,* 301 U.S. 707.

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[9] Petitioner does not contend that there was any error in the main charge.

The court below properly held that there was no error in either the main charge or in the supplementary instructions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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